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SUPERIOR COURT OF WA.
SHARON K. FOGO

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12-1-00501-0
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Motion
3246817



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR MASON COUNTY

STATE OF WASHINGTON,

Plaintiff

vs.

ASARIA J. MILLER,

Defendant.

No. 12-1-00501-0

MOTION FOR RELIEF FROM JUDGMENT
AND FOR RESENTENCING PURSUANT
TO CrR 7.8

I. Introduction

The Washington Supreme Court recently held in *State v. Houston-Sconiers*, 188 Wash. 2d 1, 391 P.3d 409 (2017) that the Eighth Amendment's ban on cruel and unusual punishment requires courts to consider the mitigating qualities of youth when sentencing defendants who were convicted for crimes committed before they were 18. The Court further held the Eighth Amendment prohibits courts from considering firearm sentence enhancements as mandatory for children. *Id.*

MOTION FOR RELIEF FROM JUDGMENT- 1 -

Race & Justice Clinic
University of Washington School of Law
P.O. Box 85110
Seattle, Washington 98145-1110
(206) 543-3434

1 Asaria Miller ("Asaria"), Petitioner, is serving a 390 month sentence, which includes a
2 five year firearm sentence enhancement, for a murder initiated by her father and completed by
3 her boyfriend. She was 16 years old at the time of the offense. Asaria is now 22 years old and
4 incarcerated at the Washington Correctional Center for Women in Gig Harbor, Washington.
5

6 II. Statement of the Case

7 A. Background

8 Asaria was born to two teenagers, Brandi Keith and Anthony Miller, on January 22,
9 1996. Appendix A at 1. Brandi and Anthony's relationship ended only two years later and the
10 relationship between her two families remained antagonistic throughout her childhood. *Id.* Asaria
11 primarily lived with her mother, but she was abruptly removed when bruises were found on her
12 body and the child welfare system became involved. *Id.* at 2. Her father briefly "rescued" her,
13 but she was eventually returned to her mother's care, losing all contact with her dad again. *Id.*
14 Asaria continued to experience instability in her household throughout her childhood as her mom
15 struggled with mental health issues and her grandmother was left as a primary caregiver. *Id.*
16

17 At the age of 12, Asaria was raped. Appendix A at 2. She did not disclose her sexual
18 assault to anyone. *Id.* Instead, she used marijuana and alcohol to cope with the trauma. *Id.*
19 During this tumultuous time in her life, Asaria was involved in a peer-driven assault and was
20 sentenced at the age of 13 to two years at Echo Glen Children's Center, a juvenile rehabilitation
21 facility. *Id.* Asaria was 15 years old when she was released from Echo Glen. *Id.* at 3. Seeking
22 some sense of stability, she asked her dad if she could move in with him in hopes of rebuilding
23 their relationship and becoming a part of his family. *Id.* Shortly thereafter, she moved to Shelton
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1 to live with her dad and his girlfriend Barbie Giles. *Id.* She enrolled in 9th grade courses at
2 Choice High school in Shelton, Washington. *Id.* When her dad and Barbie broke up, Asaria
3 moved back in with her mom. *Id.* Although her dad did not provide the supportive environment
4 she needed, she still clung to her newfound relationship with her father, even when it became
5 toxic. *Id.*

6
7 Asaria and her dad continued their relationship over text messaging; her dad used their
8 messages to begin the plan to murder Barbie. In between text messages about the plot, Asaria
9 texted her dad about old family memories and major life events. She received the attention she
10 had always wanted from her dad as long as she went along with his plot. *Id.* On November 21,
11 2012, Asaria and her boyfriend and co-defendant, James Hartfield, drove to Shelton, Washington
12 and carried out her dad's plan. Asaria's father was found guilty by a jury of Conspiracy to
13 Commit Murder in the First Degree and Murder in the First Degree; on April 8, 2013, and was
14 sentenced to 56.6 years in prison. Appendix B.

15 16 17 **B. Conviction and Sentence**

18 As a 16 year old, Asaria was automatically declined to adult court. Asaria was initially
19 charged with Murder in the First Degree, Conspiracy to Commit Murder in the First Degree,
20 Burglary in the First Degree, and two firearm enhancements. Within six months, she pled guilty
21 to Murder in the First Degree with a firearm enhancement and took a plea deal for a
22 recommended sentence of 360 months. She took the plea under the belief that she would
23 otherwise receive a de-facto life sentence. Appendix A at 4. Asaria navigated the system alone
24 with little understanding of her rights and options. *Id.* As part of her plea deal, she was required
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1 to testify against her father during his trial on January 24, 2013. At Asaria's sentencing hearing
2 on May 7, 2013, the court did not consider her age or youthfulness. Asaria received a sentence of
3 390 months, 30 months above the recommended sentence, which included a five year firearm
4 enhancement. Judgment and Sentence at 4.

5
6 Asaria was 17 years old and did not understand her appeal rights and consequently did
7 not file a direct appeal within 30 days or a collateral attack within one year of her judgment and
8 sentence. Appendix A at 4.

9 C. Prison

10 Since her sentencing, Asaria has demonstrated a strong desire to help others and has been
11 developing skills that will enable her to serve low-income populations in the future. Appendix A
12 at 4. Asaria thrived under the structure and support at Echo Glen, where she served the first four
13 years of her prison sentence up to her 21st birthday. *Id.* Asaria served as a representative on Echo
14 Glen's Youth Voice counsel and worked as a custodian. Appendix C. Carmen Rivera, the
15 Juvenile Rehabilitation Coordinator at Echo Glen wrote that, "She is one of the most motivated
16 and hardest working residents I have ever seen at Echo Glen." *Id.* She also noted that Asaria "is
17 a loving mother, intelligent student, hardworking employee, and strong leader." *Id.* Asaria is
18 motivated by her daughter to continue improving herself and gaining new skills, she continues to
19 excel at Washington Corrections Center for Women. Appendix A at 4. She has completed
20 numerous trainings, including Co-Dependents Anonymous and she is now working towards
21 becoming a trainer for the course. *Id.* Asaria looks forward to starting courses in the fall for her
22 associate's degree in psychology; she hopes to become a social worker. *Id.* She also recently
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1 became an apprentice with the Correctional Industries Braille program, where she looks forward
2 to learning a new trade that will help others. *Id.*

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6 Asaria making pillows
7 for children in Uganda (2015)
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12 **III. Grounds for Relief**

13 Asaria seeks relief from judgment and a resentencing hearing outside the one-year time
14 bar pursuant to RCW 10.73.100(6) and CrR 7.8(b)(5) based on "a significant change in the law,
15 which is material to [her]... sentence," and applies retroactively.
16

17 **IV. Evidence Relied Upon**

- 18 1. Declaration of Asaria Miller. Appendix A.
 - 19 2. Asaria Miller Judgment and Sentence. Appendix B.
 - 20 3. Asaria Miller Letter of Recommendation. Appendix C.
 - 21 4. The record herein.
- 22
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1 V. Argument

2 A) *Houston-Sconiers* created a substantial change in the law when it altered the way
3 Washington courts must determine the appropriate sentence for juveniles
4 adjudicated in the adult criminal system.

5 *Houston-Sconiers* created a substantial change in the law by requiring that age be
6 considered as a mitigating factor at the time of sentencing. *Houston-Sconiers* further transformed
7 the sentencing laws by giving judges full discretion to deviate from the Sentencing Reform Act
8 (SRA) ranges and mandatory sentencing enhancements when sentencing juveniles. 188 Wash. 2d
9 1, 391 P.3d 409 (2017).

10 A substantial change in the law exists when the defendant could not have argued an issue
11 before the new appellate decision was published. *State v. Miller*, 185 Wash.2d 115, 371 P.3d
12 528, 530 (2016). This occurs when “an intervening appellate decision overturns a prior appellate
13 decision that was determinative of a material issue.” *Id.*

14 As a practical matter, *Houston-Sconiers* overturns *State v. Ha'mim*, 132 Wash. 2d 834,
15 940 P.2d 633 (1997). While the *Houston-Sconiers* decision does not discuss *Ha'mim*, the two
16 decisions run counter to each other. The Court in *Ha'mim* declined “to hold that age alone may
17 be used as a factor to impose an exceptional sentence outside of the standard range.” *Id.* at 837.
18 The Court supported this rationale by the fact that “[t]he SRA does not list age as a statutory
19 mitigating factor.” *Id.* at 846. The *Ha'mim* Court noted that
20

21 the mitigating factors listed in the SRA are only illustrative, and a court may use a
22 nonstatutory factor which is mitigating to justify imposing a more lenient sentence than
23 set by the standard range. However, such a factor must be both substantial and
24 compelling, and the age of a young adult defendant is not alone such a factor.

25 *Id.* at 847. While *Ha'mim* initially received an exceptional sentence downward of 31 months
26 based upon her youth and lack of prior police contact, her sentence was ultimately reversed and

1 remanded based on the Court's interpretation that age could not be considered a sole mitigating
2 factor. *Id.* at 848. Given the Court's analysis of Washington's sentencing guidelines and
3 mandatory enhancement statutes in *Houston-Sconiers*, it is contradictory for Washington
4 sentencing courts to also follow the standard put forth in *Ha'mim*. Pursuant to *Houston-Sconiers*,
5 age is a substantial and compelling factor the court must consider when sentencing youth tried in
6 adult criminal proceedings.

7
8 Since the Court's *Ha'mim* decision in 1997, burgeoning youth development science has
9 shaped the Washington Supreme Court's perception of age and youthfulness in relation to a
10 defendant's culpability. In *State of Washington v. O'Dell*, the Court did not expressly overrule
11 *Ha'mim*; however, it noted the "Court did not have the benefit of studies about adolescent
12 cognitive and emotional development, which have established a clear connection between youth
13 and decreased moral culpability for criminal conduct." 183 Wash.2d 695, 686, 358 P.3d 359,
14 361(2015). As a result, the Washington Supreme Court disapproved of its earlier conclusions
15 made in *Ha'mim* that the defendant's age did not relate to the crime. *Id.*

16
17 The *Houston-Sconiers* decision goes farther than *O'Dell*, displacing *Ha'mim*'s precedent
18 by mandating factors of youthfulness *must* be analyzed by the sentencing court. 188 Wash.2d at
19 9.

20
21 [A] sentencing judge's hands are not tied. Because "children are different" under the
22 Eighth Amendment and hence "criminal procedure laws" **must** take the defendants'
23 youthfulness into account, sentencing courts **must** have absolute discretion to depart as
24 far as they want below otherwise applicable SRA ranges and/or sentencing enhancements
when sentencing juveniles in adult court, regardless of how the juvenile got there.

25 *Id.* (emphasis added).

1 In *Houston-Sconiers*, the Court adopted the *Miller v. Alabama* factors of youth, including
2 mitigating circumstances related to the defendant's youth, such as age and its "hallmark
3 features;" for example, a juvenile's immaturity, impetuosity, and failure to appreciate risks and
4 consequences. 567 U.S. 460, 477, 132 S.Ct. 2455, 2468, 183 L.Ed.2d 407 (2012) (holding
5 children are different). Moreover, the *Houston-Sconiers* decision lists other factors of youth that
6 sentencing courts must consider:
7

8 [T]he nature of the juvenile's surrounding environment and family circumstances, the
9 extent of the juvenile's participation in the crime, the way familial and peer pressures
10 may have affected the juvenile, how age impacted any legal defense, and finally any
11 factors suggesting the child might be successfully rehabilitated.

12 188 Wash.2d at 23. Consequently, *Houston-Sconiers* contravenes *Ha'mim* by mandating that the
13 SRA and enhancement statutes not be interpreted in a way that hampers judges' discretion at
14 sentencing, because the Eighth Amendment establishes children must be treated differently.

15 Additionally, *Houston-Sconiers* brings the established notion that children are different
16 from adults into the sentencing realm for youth whose cases fall outside of the *Miller v.*
17 *Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012); *Graham v. Florida*, 560 U.S.
18 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010); and *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct.
19 1183, 161 L. Ed. 2d 1 (2005) fact paradigms. This string of cases applied the notion of treating
20 children differently to specific contexts. *Miller*, 567 U.S. 460 (holding mandatory life without
21 parole for youth under 18 at the time of their crime violates the Eighth Amendment); *Graham*,
22 560 U.S. 48 (holding that youth may not be sentenced to life without parole for non-homicide
23 crimes and must be given a meaningful opportunity for release); *Roper*, 543 U.S. 551 (holding
24 the Eighth Amendment prohibits the execution of youth who are under 18 when they commit
25

1 their crime.) Through *Houston-Sconiers*, the Washington Supreme Court has extended Eighth
2 Amendment protection for youth outside the context of capital punishment and life sentences.

3 The *Houston-Sconiers* decision created a substantial change in Washington law by
4 holding that, because children are constitutionally different from adults, courts sentencing
5 juveniles must have complete discretion to impose any sentence below the SRA range and/or
6 sentencing enhancements, and must consider mitigating circumstances surrounding age.
7

8 **B) The change in law is material to Asaria's case because the court did not**
9 **meaningfully consider Asaria's age and youthfulness when it sentenced her to a 390-**
10 **month prison sentence, which included a five-year firearm enhancement.**

11 At Asaria's sentencing, the Court believed it was bound by the SRA. Asaria was 16 years
12 old at the time of the crime and bore many of the "hallmark features" of youth. *Houston-*
13 *Sconiers*, 188 Wash.2d at 23. Until *Houston-Sconiers*, Asaria could not have successfully argued
14 that her age must be considered and that the imposition of a firearm enhancement was
15 discretionary or could be run concurrently with her standard range sentence. Regardless of
16 Asaria's plea deal, the court did not consider her age during sentencing because the court did not
17 realize it had full discretion to give her a sentence below the standard range. The court also did
18 not have the benefit of considering evidence of Asaria's youthfulness and upbringing.
19

20 Recent research on brain science has transformed the way courts sentence juveniles.
21 Youth differ from adults in psychosocial functions, as well as neuropsychologically and
22 neurobiologically. Laurence Steinberg & Elizabeth S.Scott, *Less Guilty by Reason of*
23 *Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death*
24 *Penalty*, 58 Am. Psych. 1009, 1013 (2003). Young people's brains are still developing, and as a
25 result, their long-term planning and evaluation of risk and reward are impacted. *Id.* at 1013. The
26

1 prefrontal cortex, which regulates long-term planning, as well as judgment and decision-making,
2 is not developed until "late adolescence." *Id.* at 1013. Scientists have found that the neural
3 connections that assist in the functioning of the prefrontal cortex do not fully develop "until the
4 early 20s or later." Sara Johnson et al., *Adolescent Maturity and the Brain: The Promise and*
5 *Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. of Adolesc. Health, 216,
6 217 (2009). Until their brains fully develop, youth struggle to form their identity. Laurence
7 Steinberg & Elizabeth S. Scott, 58 Am. Psych. at 1009. They often experiment with alcohol,
8 drugs and antisocial behavior while they attempt to figure themselves out, "[t]hus research on
9 identity development in adolescence support the view that much youth crime stems from
10 normative experimentation with risky behavior and not deep-seated moral deficiency reflective
11 of 'bad' character." *Id.* at 1015. Along with unformed character, youth experience "deficiencies
12 in decision-making capacity" and "heightened vulnerability to coercive circumstances." *Id.* at
13 1011, 1014. Youth weigh the risks less than the rewards when making decisions, especially when
14 they are with others. *Id.* at 1014. They are more "susceptible to external pressure" because of
15 their immaturity, while also "lack[ing] the freedom that adults have to extricate themselves from
16 a criminogenic setting." *Id.* at 1014. Due to the developments in brain science and a deeper
17 understanding of the juvenile mind, courts have approached the punishment of juveniles
18 differently.

22 In *Miller*, the Supreme Court noted the specific factors courts should consider when
23 sentencing juveniles. *Miller v. Alabama*, 567 U.S. at 477. The Washington Supreme Court cited
24 these factors to guide judicial discretion in sentencing juveniles and found that since the lower
25 court did not consider the factors, Houston-Sconiers needed to be resentenced. *Houston-*

1 *Sconiers*, 188 Wash.2d at 23. The *Miller* factors evaluate “features” of youthfulness, such as
2 immaturity and inability to “appreciate risks and consequences.” *Miller v. Alabama*, 567 U.S. at
3 477. A young person’s family and home life, as well as, the influence of familial pressures
4 should also be considered. *Id.* Courts should evaluate the extent of the youth’s participation in
5 the crime based on those pressures. *Id.* Lastly, the *Miller* Court emphasized that a court’s refusal
6 to consider age “ignores that [s]he might have been charged and convicted of a lesser offense if
7 not for incompetencies associated with youth—for example, h[er] inability to deal with
8 prosecutors (including on a plea agreement).” *Id.* at 477–78. The features of youth must be
9 considered because a young person’s character and traits are less formed and their actions are
10 “less likely to be ‘evidence of irretrievable depravity.’” *Id.* at 471 (citing *Roper v. Simmons*, 543
11 U.S. at 570, 125 S.Ct.1183 (2005)).
12
13

14 Although Asaria was a participant in a serious and tragic crime, she was also a child. Her
15 actions demonstrated her youthfulness, but none of these factors were considered by the court at
16 her sentencing. She was driven by her desire to maintain the relationship she had always wanted
17 with her father. Appendix A at 3. Her limited criminal history is evidence of her struggle to find
18 her identity and cope with trauma, which resulted in her falling in with the wrong peer group and
19 being involved with an assault. *Id.* at 2-3. After being released from Echo Glen at the age of 15,
20 she sought out the parent she believed could provide her with the stability she needed to succeed.
21 *Id.* at 3. Unfortunately, rather than provide her with the support she desperately sought, her father
22 took advantage of her vulnerability to help him plot the murder of his ex-girlfriend. *Id.* Due to
23 her adolescent inability to weigh risks and rewards, Asaria focused on the reward of a
24 relationship with her father. *Id.* Asaria’s youthfulness impacted her decision making after her
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1 arrest as well. Asaria was 17 years old and not fully competent to negotiate with the prosecutor.
2 She made the decision to take a plea deal and testify against her father under the belief that her
3 only other option was to face 55-60 years in prison, a de facto life sentence. *Id.* at 4.

4 Asaria should be resentenced so the court may fully consider Asaria's circumstances and
5 the features of youthfulness she demonstrated at the time of the offense and at the time of her
6 plea.
7

8 **C) Sufficient reasons exist to require retroactive application of the *Houston-Sconiers***
9 **legal standard.**

10 Retroactive application of a changed legal standard is required "where a statute has been
11 construed by the highest court of the state, [because] the court's construction is deemed to be
12 what the statute has meant since its enactment." *Matter of Colbert*, 186 Wash.2d 614, 620 380
13 P.3d 504, 507 (2016) citing *State v. Moen*, 129 Wash.2d 535, 538, 919, P.2d 69 (1996).
14

15 *Houston-Sconiers* is retroactive because the Court specifically addressed statutory
16 interpretation and noted that the change in the law applied to all state statutes, stating, "[t]o the
17 extent our state statutes have been interpreted to bar such discretion with regard to juveniles, they
18 are overruled." 188 Wash.2d 1, 21, 391 P.3d 409, 420 (2017). This differs from the outcome in
19 *Colbert*, where the Court found the petitioner's authority, *State v. W.R.*, 181 Wash.2d 757, 336
20 P.3d 1134 (2014), was not retroactive because the new law was not based on statutory
21 interpretation, but on due process grounds. In *Houston-Sconiers*, the Court found that sentencing
22 judges must interpret the SRA and enhancement statutes to allow full discretion when sentencing
23 juveniles, because under the Eighth Amendment, children are different. 188 Wash.2d at 9.
24

25 Houston-Sconiers had a right to be resentenced under the proper interpretation because the judge
26

1 misinterpreted the SRA and did not recognize his full discretion under Washington law. *Id.* This
2 Court should afford Asaria the ability to be resentenced under the substantive change in the law
3 announced in *Houston-Sconiers*.

4
5 **D) The Washington Supreme Court's recent decision in *State v. Scott* does not preclude**
6 **Asaria from seeking a resentencing hearing under *Houston-Sconiers*.**

7 In *State v. Scott*, the Washington Supreme Court narrowly held "RCW 9.94A.730's
8 parole provision is an adequate remedy for a *Miller* violation, rendering unnecessary the
9 resentencing of a defendant who long ago received a de facto life sentence as a juvenile." *State v.*
10 *Scott*, No. 94020-7, 2018 WL 2144525, at 1 (Wash. May 10 2018). Asaria's case is
11 distinguishable. For this reason the *Miller* fix does not cure the unconstitutionality of Asaria's
12 sentence and the holding of *Houston-Sconiers* is material to Asaria's sentence.

13
14 **i. The "Adequacy Requirement" found in RAP 16.4 does not apply to Asaria's**
15 **CrR 7.8 Motion for Relief from Judgment.**

16 The *Scott* Court held that "[b]ecause [Scott] has an adequate remedy, collateral relief via
17 a personal restraint petition is not available under RAP 16.4(d)." *State v. Scott*, No. 94020-7,
18 2018 WL 2144525 at 15. The "adequate remedy" requirement found in RAP 16.4 and relied on
19 by the Court in *Scott*, is not applicable to a CrR 7.8 Motion for Relief from Judgment because the
20 rule only pertains to actions that were created as Personal Restraint Petitions (PRP). RAP
21 16.1(c) enumerates that "[r]ules 16.3 through 16.15 define the procedure for a personal restraint
22 petition, but only when the proceeding is started for the first time in the appellate court." Despite
23 this, the Court refers to Scott's action as a PRP and fails to address how the "adequate remedy"
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1 standard applies to CrR 7.8 Motions. RAP 16.1 does not require a court to apply the "adequate
2 remedy" standard to CrR 7.8 Motions, including Asaria's CrR 7.8 Motion.

3 **ii. An ISRB hearing in 20 years is not an adequate remedy in Asaria's case.**

4 Although Scott initially received an unconstitutional sentence of 900 months, The Court
5 found his ability to go before the Indeterminate Sentencing Review Board (ISRB) to be an
6 adequate remedy, so Scott was not entitled to a resentencing hearing. *State v. Scott*, No. 94020-7,
7 2018 WL 2144525, at 6. While Scott was not granted parole, he continues to have the
8 opportunity to go before the Board every five years. Asaria is ineligible to go before the ISRB
9 under the *Miller* fix statute, RCW 9.94A.730, until 2033. Even if Asaria goes before the ISRB in
10 2033, the ISRB is not required to consider her age at the time of her offense.

11 **iii. Asaria's sentence has not been "long final."**

12 Additionally, the *Houston-Sconiers* court acknowledged that the Supreme Court had
13 approved a post-sentencing *Miller* fix by extending parole eligibility as a remedy to juveniles
14 with unconstitutional sentences that are "long final." *State v. Scott*, 94020-7, 2018 WL 2144525,
15 at 4 (Wash. May 10, 2018) (citing *State v. Houston-Sconiers*, 188 Wash.2d 1 at 20). Like
16 *Houston-Sconiers*, Asaria's sentence is not "long final". Scott's sentence is arguably "long
17 final." Scott brought his CrR 7.8 Motion arguing a significant change in the law 23 years after
18 his sentence and after he petitioned the ISRB for early release. *Id.* at 6. While outside the one-
19 year time bar, Asaria files this CrR 7.8 motion five years after her judgment and sentence.

20 **iv. Asaria did not receive a de facto life sentence.**

1 The *Miller* fix is not an adequate remedy for the denial of Asaria's constitutional right to
2 have her age considered at sentencing. Unlike Scott, Asaria did not receive a de facto life
3 sentence.

4 **v. Asaria received a firearm enhancement.**

5 Asaria was subject to a 60 month firearm enhancement that runs consecutively with her
6 sentence without consideration of her age. Pursuant to *Houston-Sconiers*, judges have discretion
7 to not give firearm enhancements or to run the firearm enhancement concurrently with the
8 sentence. *State v. Scott* does not address this issue.
9

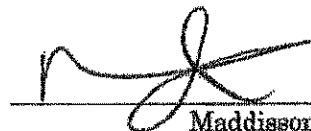
10 **VI. Conclusion**

11 The one-year time bar does not preclude Asaria from seeking a new sentence because
12 *Houston-Sconiers* created a substantial change in the law that is material to her sentence and
13 applies retroactively. Had Asaria's age been considered at her sentencing, a different outcome
14 may have resulted. For these reasons, Asaria's Motion for relief from judgment is timely and the
15 Court should grant her a new sentencing hearing.
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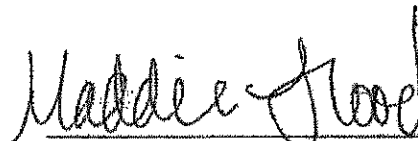
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6 Respectfully submitted on this 4th day of June, 2018

7
8
9 

10 Kimberly Ambrose
11 University of Washington School of Law
12 Race and Justice Clinic
13 Attorney for Asaria Miller
14 WSBA #19258

15
16 

17 Maddison Alexander
18 University of Washington School of Law
19 Race and Justice Clinic
20 ^{Rule 9} Law student
21 WSBA # 9065395

22
23 

24 Madeline Flood
25 University of Washington School of Law
26 Race and Justice Clinic
27 Law Student

APPENDIX A

No. 12-1-00501-0

DECLARATION OF ASARIA J. MILLER

VS.

Petitioner

1. I am over 18 years old, and competent to testify about the statements below, which are based on my own personal knowledge.
2. I am currently 22 years old and incarcerated in the Washington Correctional Center for Women.
3. I was born on January 22, 1996 in Shelton, Washington to two teenage parents, Brandi Keith and Anthony Miller. They dropped out of high school when they had me and they struggled to make their relationship work; they ended up breaking up when I was two years old.
4. For the most part I have always lived with my mom, but I lived with my dad for short periods of time. I lived with him briefly after my grandma (my dad's mom) found bruises

Race & Justice Clinic
University of Washington School of Law
P.O. Box 85110
Seattle, Washington 98145-1110
(206) 543-3434

1 on my body and alleged that my mom's boyfriend at the time was abusing me. Even
2 though I was pretty young when this happened and I eventually went to live my mom
3 again, it was the first time I felt like my dad was my hero for rescuing me from that
4 situation.

- 5
6 5. My parents were young and came from broken homes; they didn't really know how to be
7 parents to me and had their own issues. Ever since I can remember, my mom battled with
8 her bipolar disorder; I was resentful towards her for never being home and for all the
9 boyfriends she brought around. I was angry at my father for basically disappearing from
10 my life and abandoning me. Because my mom and dad were the way they were, my
11 mom's grandma basically raised me even though she never really wanted to take on that
12 role. She always told me my dad didn't love me or want anything to do with me.

13
14 Growing up with my grandma was hard, she loved me in a way that hurt and made me
15 question the truth.

- 16
17 6. When I was around 11, I started sneaking out of the house when my mom's boyfriends
18 tried to discipline me. I started hanging out with older kids who weren't the best
19 influence. I began experimenting with drugs and alcohol and ditching school with my
20 friends. It spiraled out of control when one day I ditched school and was raped by
21 someone I did not know very well. I was 12 years old at the time and it turned my world
22 upside down; I didn't feel like I could go to my mom or my grandma so I didn't tell
23 anyone about my assault and used drugs and alcohol to cope with my trauma. Around this
24 time, I continued gravitating towards my older friends because it gave me a sense of
25 family, but I struggled with peer pressure. When I was 13 years old, I was involved in an
26

1 assault with my older friends, and as a result, spent two years at Echo Glen Children's
2 Center.


- 3 7. When I was released from Echo Glen at 15, I moved in with my father and his girlfriend
4 Barbie Giles in hopes of starting fresh. I knew that living with my mom and grandma was
5 unhealthy, I wanted so badly to feel love and support from my father and to be a part of
6 his family. I enrolled in 9th grade classes at Choice High School in Shelton, Washington.
7 However, shortly after I moved in with my dad, his relationship with Barbie took a turn
8 for the worse and they ended up splitting up. I moved in with my mom but still hoped to
9 build a relationship with my dad. My strong need for my father to be in my life blinded
10 me to his manipulation and ulterior motives.
11
12 8. When I was 16, I became involved in my father's plan to murder his then ex-girlfriend
13 Barbie Giles. Looking back, I think I failed to realize the gravity of the situation because
14 I was so dependent on my father's approval and love. I was young and immature, looking
15 for affirmation from my father in completely the wrong way. For the first time my dad
16 was taking an interest in me and texting me everyday. I could finally share major things
17 that were happening in my life, like when I got pregnant with my daughter. I could
18 reminisce about when I was a little and when him and my mom were together. For the
19 first time in a long time I felt like he cared about me. I finally had what I always wanted;
20 my dad in my life; but that came at too big of a price. I wish my dad had just stayed out
21 of my life. I never wanted Barbie to get hurt. At 16, I had no concept of the consequences
22 that had been set in motion. Everyday I wish I could turn back the clock and change what
23 happened.
24
25
26
27

1 9. After I was arrested everything happened so fast and I was so scared of what was going
2 to happen to me. I was 16, pregnant, and alone. I didn't have a support system to turn to
3 and didn't understand what my lawyer was telling me. I thought I could get sixty years in
4 prison so I took a plea deal for thirty years so I could get out sooner to be with my unborn
5 daughter. I did what I was told to do, including testifying against my father at his trial, I
6 never knew there were other ways or that I had other options. On May 7, 2013 in Mason
7 County, I was sentenced to 390 months in prison, I was 17 years old. I kept thinking this
8 can't be my life.
9

10 10. Since being incarcerated I have spent a lot of time coming to terms with what happened. I
11 fully engaged in the services provided to me and for the first time took steps to take care
12 of my mental and emotional health. On June 2, 2013, I gave birth to my daughter. She
13 was my wake up call because I realized what I had brought her into a world where both
14 her parents are locked up, her grandma is very ill, and her family is dysfunctional and
15 will raise her in an unhealthy environment. She gave me the strength to break the chain.
16 brought out the best in me, the real me, she saved me. I'm breaking statistics now; I'm a
17 teen mom who received my diploma. When I was 21 I was transferred from Echo Glen to
18 The Washington Correctional Center for Women. I'm going to college, working as a brail
19 apprentice, learning how to be an adult. I weekly participate in co-dependents anonymous
20 and hope to be a trainer. When I get out I want to be a social worker so I can help young
21 people who don't have healthy supportive families. I may have come to prison a baby but
22 I'll be leaving with knowledge, wisdom, and the strength to love myself enough to create
23 a different path for me and my daughter.
24
25
26
27

1 I declare under perjury of the laws of the state of Washington that the foregoing is true
2 and correct.
3
4

5 Dated this 10th day of April, 2018, at Gig Harbor, Washington.
6

7
8 
9 Asaria Miller DOC # 3650665
10 Washington Corrections Center for Women
11 9601 Bujacich Rd. NW
12 Gig Harbor, WA 98332-8300
13
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APPENDIX B

3/21/13
DOC
SJM

RECEIVED & FILED
(19) APR - 8 2013
GINGER BROOKS, Clerk of the
Superior Court of Mason Co. Wash.

Superior Court of Washington
County of Mason

State of Washington, Plaintiff,

vs.

ANTHONY RAYMOND MILLER,
Defendant.

DOB: June 13, 1975

PCN: 941104746

SID:

No. 12-1-00497-8

Felony Judgment and Sentence
(FJS)

[X] Prison

[X] Clerk's Action Required, 2.1, 3.2, 4.1, 4.3, 5.2,
5.3, 5.5 and 5.7

I. Hearing

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

2.1 Current Offenses: The defendant is guilty of the following offenses, based upon

[X] jury verdicts (date) February 20, 2013

Count	Crime	RCW (w/subsection)	Class	Date of Crime
I	Conspiracy to Commit Murder in the First Degree	9A.28.040 9A.32.030(1)(a)	FA	11/01/2012 to 11/20/2012
II	Murder in the First Degree (Firearm Enhancement) (Aggravated Crime of Domestic Violence)	9A.32.030(1)(a) 9.94A.825 9.94A.535(3)(h)(ii)	FA	11/21/2012

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

The jury returned a special verdict or the court made a special finding with regard to the following:

[X] The defendant used a firearm in the commission of the offense in Count II. RCW 9.94A.602, 9.94A.533.

[X] For the crime(s) charged in Count II, domestic violence was pled and proved. RCW 10.99.020.

[] Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).

[] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

Crime	Cause Number	Court (county & state)	DV* Yes
/	/	/	/

*DV: Domestic Violence was pled and proved.

[] Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History (RCW 9.94A.525): NONE KNOWN

Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	A or J Adult, Juv.	Type of Crime	DV* Yes
/	/	/	/	/	/	/
/	/	/	/	/	/	/

*DV: Domestic Violence was pled and proved.

- ☐ Additional criminal history is attached in Appendix 2.2.
- ☐ The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- ☐ The prior convictions listed as numbers(s) _____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)
- ☐ The prior convictions listed as numbers(s) _____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520

2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
I	0**	XV	180 to 240 months**	N/A	180 to 240 months**	Life \$50,000.00
II	0**	XV	240 to 320 months**	60 months (FA)***	300 to 380 months**	Life \$50,000.00

* (V) VUCSA in a protected zone, (JP) Juvenile present, (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude, (FA) defendant or accomplice armed with Firearm.

** Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW 9.94A.515 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by using an offender score of zero. The standard sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection. RCW 9.94A.589(1)(b).

*** Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter.

RCW 9.94A.533(3)(a), (e).

☐ Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended sentencing agreements or plea agreements are ☐ attached ☒ as follows: NONE.

2.4 ☒ Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence:

☐ below the standard range for Count(s) _____.

☒ above the standard range for Count(s) 11.

☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

☒ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☒ found by jury by special interrogatory.

☐ within the standard range for Count(s) _____, but served consecutively to Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. ☒ Jury's special interrogatory is attached. The Prosecuting Attorney ☒ did ☐ did not recommend a similar sentence.

2.5 Legal Financial Obligations/Restitution. The court has considered the total amount owing, the defendant's present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. (RCW 10.01.160). The court makes the following specific findings:

☒ The defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753): _____

☐ The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

III. Judgment

3.1 The defendant is **guilty** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 ☐ The court **dismisses** Counts _____ in the charging document.

IV. Sentence and Order (Prison)

It is ordered:

4.1 **Confinement.** The court sentences the defendant to total confinement as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

240 months on Count I.

440 months on Count II, including 60 months for Firearm Enhancement.

☒ The confinement time on Count II contains a mandatory minimum term of 240 months.

☒ The confinement time on Count II includes 60 months as enhancement for ☒ firearm ☐ deadly weapon ☐ VUCSA in a protected zone ☐ manufacture of methamphetamine with juvenile present. 36.6 years

Actual number of months of total confinement ordered is 680 Months

☒ All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: Counts I and II shall be served consecutively pursuant to RCW 9.94A.589(1)(b).

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589.

Confinement shall commence immediately unless otherwise set forth here: _____

(b) **Credit for Time Served.** The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.

(c) ☐ **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of confinement.

4.2 **Community Custody.** (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

(A) The defendant shall be on community custody for the longer of:

(1) the period of early release. RCW 9.94A.728(1)(2); or

(2) the period imposed by the court, as follows: Count(s) I and II: 36 months for Serious Violent Offenses.

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm

compliance with the orders of the court; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody.

The court orders that during the period of supervision the defendant shall:

☐ consume no alcohol.

☐ have no contact with: _____

☐ remain ☐ within ☐ outside of a specified geographical boundary, to wit: _____

☐ not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age.

☐ participate in the following crime-related treatment or counseling services: _____

☐ undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse

☐ mental health ☐ anger management, and fully comply with all recommended treatment. _____

☐ comply with the following crime-related prohibitions: _____

☒ Other conditions: **SEE CONDITIONS OF COMMUNITY CUSTODY FILED HERewith**

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

4.3 Legal Financial Obligations: The defendant shall pay to the clerk of this court:

JASS CODE

PCV \$ 500.00 Victim assessment RCW 7.68.035

CRC \$ 2,207.71 Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Criminal filing fee \$ 200.00 FRC
Witness costs \$ 244.81 WFR
Sheriff service fees \$ 1,513.50 SFR/SFS/SFW/WRF
Jury demand fee \$ 250.00 JFR
Extradition costs \$ EXT
Other \$

PUB \$ 8,059.50 Fees for court appointed attorney RCW 9.94A.760

WFR \$ 90.75 Court appointed defense expert and other defense costs RCW 9.94A.760

FCM/MTJ \$ Fine RCW 9A.20.021; [] VUCSA chapter 69.50 RCW, [] VUCSA additional fine deferred due to indigency RCW 69.50.430

CDF/LDI/PCD \$ Drug enforcement fund of RCW 9.94A.760

NTF/SAD/SDI

CLF \$ 100.00 Crime lab fee [] suspended due to indigency RCW 43.43.690

\$ 100.00 DNA collection fee RCW 43.43.7541

FPV \$ Specialized forest products RCW 76.48.140

\$ Other fines or costs for:

RTN/RJN \$ RESERVED Restitution to: RESERVED

\$ RESERVED Restitution to: RESERVED

\$ RESERVED Restitution to: RESERVED

(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

\$ 11,057.96 Total RCW 9.94A.760

[X] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[X] shall be set by the prosecutor.

[] is scheduled for (Date).

[] The defendant waives any right to be present at any restitution hearing (sign initials):

[] Restitution Schedule attached.

[] Restitution ordered above shall be paid jointly and severally with:

Name of other defendant Cause Number (Victim's name) (Amount \$)

RJN

[X] The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

☒ All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$25.00 per month commencing within sixty (60) days of release from total confinement. RCW 9.94A.760.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

☐ The court orders the defendant to pay costs of incarceration at the rate of \$_____ per day (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.)

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

☐ **Electronic Monitoring Reimbursement.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of \$_____.

4.4 DNA Testing. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754.

☐ **HIV Testing.** The defendant shall submit to HIV testing. RCW 70.24.340.

4.5 No Contact:

☒ The defendant shall not have knowing contact with the immediate family of Barbara Giles (name) _____ including, but not limited to, personal, verbal, telephonic, written or contact through a third party for LIFE. (which does not exceed the maximum statutory sentence).

☐ The defendant is excluded or prohibited from coming within _____ (distance) of:
☐ _____ (name of protected person(s))'s ☐ home/
residence ☐ work place ☐ school ☐ (other location(s)) _____, or
☐ other location _____
until _____ (which does not exceed the maximum statutory sentence).

☐ A separate Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed concurrent with this Judgment and Sentence.


4.6 Other: _____


4.7 Off-Limits Order. (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

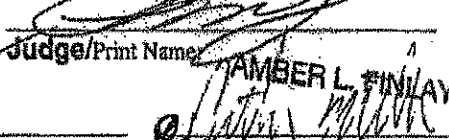
V. Notices and Signatures

- 5.1 Collateral Attack on Judgment.** If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 Length of Supervision.** If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 Notice of Income-Withholding Action.** If the court has not ordered an immediate notice of payroll deduction in Section 4.I, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 Community Custody Violation**
(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633;
(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.
- 5.5 Firearms.** You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court of Washington State where you live, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.6 ☐ Sex and Kidnapping Offender Registration.** RCW 9A.44.128, 9A.44.130, 10.01.200.
- 5.7 Motor Vehicle:** If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.
- 5.8 Other:** _____

Done in Open Court and in the presence of the defendant this date: April 8, 2013


Mason County Prosecuting Attorney
WSBA No. 31968
Print Name: Michael K. Dorcy


Attorney for Defendant
WSBA No. 20402
Print Name: James P. Foley


Judge/Print Name: AMBER L. FINLAY
Defendant
Print Name: Anthony R. Miller

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: _____

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the _____ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____, on (date) _____.

Interpreter

Print Name

I, _____, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

Witness my hand and seal of the said Superior Court affixed this date: _____.

Clerk of the Court of said county and state, by: _____, Deputy Clerk

VI. Identification of the Defendant

SID No. _____

Date of Birth June 13, 1975

(If no SID complete a separate Applicant card
(form FD-258) for State Patrol)

FBI No. _____

Local ID No. _____

PCN No. 941104746

Other JUV: 076537

Alias name, DOB: _____

Race:

☐ Asian/Pacific Islander

☒ Black/African-American

☐ Caucasian

☐ Native American

☐ Other: _____

Ethnicity:

☐ Hispanic

☒ Non-Hispanic

Sex:

☒ Male

☐ Female

Fingerprints: I attest that I saw the defendant who appeared in court affix his or her fingerprints and signature on this document.

Clerk of the Court, Deputy Clerk, Sharon R. Pego

Dated: 4-8-13

The defendant's signature: [Signature]

Left four fingers taken simultaneously

Left
Thumb

Right
Thumb

Right four fingers taken simultaneously

**Superior Court of Washington
County of Mason**

STATE OF WASHINGTON,)	Case No. 12-1-00497-8
)	
Plaintiff,)	CONDITIONS OF
)	COMMUNITY CUSTODY
vs.)	
)	
ANTHONY RAYMOND MILLER,)	
Defendant.)	

Upon release from total confinement, the defendant shall be on Community Custody / Probation or Bench Probation, as marked above, for the period specified in the Judgment and Sentence, upon the following conditions:

- ☒ The defendant shall report to and be available for contact with the assigned Community Corrections Officer as directed;
- ☒ The defendant shall reside at a location and under living arrangements that have been approved in advance by the CCO, and shall not change such arrangements/location without prior approval;
- ☒ The defendant shall consent to allow home visits by the DOC/CCO to monitor compliance with supervision. Home visits include access for purposes of visual inspection of all areas of the residence in which the defendant lives and/or has exclusive or joint control or access.
- ☒ The defendant shall remain within, or outside of, geographic boundaries specified by the CCO;
- ☒ The defendant shall work at a Department of Corrections-approved education, employment and/or community service program;
- ☒ The defendant shall not own, use, possess, transport, or receive firearms or ammunition;
- ☒ Defendant shall pay a community placement fee as determined by the Department of Corrections;

- ☒ A notice of payroll deduction may be issued or other income withholding action may be taken, without further notice to the offender, if a monthly court-ordered legal financial obligation payment is not paid when due and an amount equal to or greater than the amount payable for one month is owed;
- ☒ Legal financial obligation payments are to be made on a schedule established by the Court to begin as directed by the Court.
- ☒ The defendant shall participate in the MRT &/or GIR & Victim Awareness Education Program approved by the CCO.
- ☒ The defendant shall participate in and successfully complete a certified Anger Management counseling program.
- ☒ The defendant shall not have knowing contact, either direct or indirect, with the immediate family of the victim, Barbara Giles, including but not limited to contact in person, by mail, telephonically or through third parties.
- ☐ The defendant shall participate in mental health counseling or treatment at the direction of the CCO.

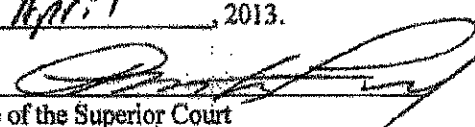
☐ Other: _____

☐ Other: _____

☐ Other: _____

☐ Other: _____

DONE IN OPEN COURT THIS 5th DAY OF April, 2013.

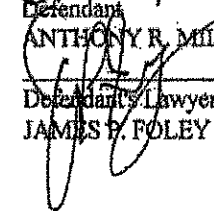

Judge of the Superior Court

Dated: _____


Prosecuting Attorney
MICHAEL K. DORCY

WSBA No.
31968


Defendant
ANTHONY R. MILLER


Defendant's Lawyer
JAMES P. FOLEY

WSBA No.
20402

Superior Court of Washington
County of Mason

State of Washington, Plaintiff,

vs.
ANTHONY RAYMOND MILLER,
Defendant.

No. 12-1-00497-8

Findings of Fact and Conclusions of Law for
an Exceptional Sentence
(Appendix 2.4B Judgment and Sentence)
(Optional)
(FNFL)

The court imposes upon the defendant an exceptional sentence ☒ above ☐ within ☐ below the standard range
based upon the following Findings of Fact and Conclusions of Law:

Findings of Fact

- I. The exceptional sentence is justified by the following aggravating circumstances:

- A) The current offense involved domestic violence as defined in RCW 10.99.020, and the offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years RCW 9.94A.535(3)(ii)(I).

DV
+ presence
of minor
children

Conclusions of Law

- I. There are substantial and compelling reasons to impose an exceptional sentence pursuant to RCW 9.94A.535.

Dated: April 8, 2013

Mason County Prosecuting Attorney
WSBA No. 31962
Print Name: Michael K. Dorcy

Attorney for Defendant
WSBA No. 20402
Print Name: James P. Foley

Judge/Print Name:

AMBER L. FINLAY

Defendant

Print Name: Anthony R. Miller

RECEIVED & FILED

FEB 20 2013

GINGER BROOKS, Clerk of the
Superior Court of Mason Co. Wash.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR MASON COUNTY

STATE OF WASHINGTON,

Plaintiff,
vs.

ANTHONY R. MILLER,

Defendant

Case No.: 12-1-00497-8

VERDICT FORM A

WE THE JURY, in the above-entitled cause of action, find
the defendant, ANTHONY R. MILLER,

Guilty

(Write in the words "Not Guilty" or the word "Guilty".)

of the crime of Conspiracy to Commit Murder in the First Degree,
as charged in Count I.

DATED THIS 20th day of February 2013.

Joseph [Signature]
PRESIDING JUROR

39

RECEIVED & FILED

FEB 20 2013

GINGER BROOKS, Clerk of the
Superior Court of Mason Co. Wash.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR MASON COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

ANTHONY R. MILLER,

Defendant

Case No.: 12-1-00497-8

VERDICT FORM B

WE THE JURY, in the above-entitled cause of action, find
the defendant, ANTHONY R. MILLER,

Guilty

(Write in the words "Not Guilty" or the word "Guilty".)

of the crime of Murder in the First Degree, as charged in Count
II.

DATED THIS 20th day of FEBRUARY 2013.

Jack Man
PRESIDING JUROR

40

RECEIVED & FILED

FEB 20 2013

SINGER BROOKS, Clerk of the
Superior Court of Mason Co. Wash.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR MASON COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

ANTHONY R. MILLER,

Defendant

Case No.: 12-1-00497-8

VERDICT FORM C

SPECIAL VERDICT

We, the jury, having found the defendant guilty of the crime of Murder in the First Degree as charged in Count II, return a special verdict by answering as follows:

QUESTION: Was the defendant ANTHONY R. MILLER or an accomplice armed with a firearm at the time of the commission of the crime of Murder in the First Degree?

ANSWER:

Yes

(Write "yes" or "no")

DATED THIS 20th day of February 2013.

Joseph M. [Signature]
PRESIDING JUROR

41

8 RECEIVED & FILED

FEB 20 2013

GINGER BROOKS, Clerk of the
Superior Court of Mason Co. Wash.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR MASON COUNTY

STATE OF WASHINGTON,

Case No.: 12-1-00497-8

Plaintiff,

VERDICT FORM D

vs.

SPECIAL VERDICT

ANTHONY R. MILLER,

Defendant

We, the jury, having found the defendant guilty of the crime of Murder in the First Degree as charged in Count II, return a special verdict by answering as follows:

QUESTION: Were the victim and the defendant family or household members?

ANSWER: Yes

(Write "yes" or "no")

QUESTION: Was the offense committed within the sight or sound of the victim's child or children who were under the age of 18 years?

ANSWER: Yes

(Write "yes" or "no")

42
DATED THIS 24th day of February 2013.

Joseph M. [Signature]
PRESIDING JUROR

Superior Court of Washington
County of Mason

STATE OF WASHINGTON,)
Plaintiff,)

NO. 12-1-00497-8

vs.)

WARRANT OF COMMITMENT
(WC)

ANTHONY RAYMOND MILLER,)
Defendant.)

THE STATE OF WASHINGTON

TO: The Sheriff of Mason County.

The defendant: ANTHONY RAYMOND MILLER has been convicted in the Superior Court of the State of Washington of the crime(s) of:

COUNT I: CONSPIRACY TO COMMIT MURDER IN THE FIRST DEGREE

COUNT II: MURDER IN THE FIRST DEGREE, WITH FIREARM ENHANCEMENT
AND RCW 9.94A.535(3)(h)(ii) AGGRAVATING FACTORS

and the Court has ordered that the defendant be punished by serving the determined sentence of:

☒ 240 Months PRISON on Count No. I

☒ 440 Months PRISON on Count No. II
(Includes 60 month Firearm Enhancement)

*To be served 680 months
consecutively Total*

☐ PARTIAL CONFINEMENT. Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions:

☐ work crew ☐ home detention

☐ work release ☐ day reporting

☐ _____ (Days) (Months) of partial confinement in the County JAIL

☐ _____ (Days) (Months) of total confinement in the county JAIL

☐ _____ Days confinement converted to _____ hours community service

[XX] DEFENDANT shall receive credit for time served prior to this date:

[XX] To be calculated by the staff of the Mason County Jail

[] In the amount of _____ Days.

[XX] YOU, THE COUNTY SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence

Dated this 8th Day of April, 2013.

AMBER L. FINLAY

Judge of the Superior Court

GINGER BROOKS

Clerk of the Superior Court

By: Deputy Clerk

cc: Prosecuting Attorney
Defendant's Attorney
Defendant
County Jail
Institutions (3)

APPENDIX C

January 18th, 2017



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

ECHO GLEN CHILDREN'S CENTER 817-41 33010 SE 99TH ST SNOQUALMIE WA. 99065-9798
(425) 831-2500 FAX (425) 831-2720 SEATTLE (206) 624-6514

To Whom It May Concern,

I have known Asaria Miler since May of 2013. During the past three and half years, I have witness Asaria grow into a mature, positive role model on campus. Asaria chose to make her situation the most beneficial it could be for herself and her family.

Between November 2014 and September 2016, I worked with Asaria on Echo Glen's Youth Voice counsel. Youth Voice is a student ran counsel consisting of youth representatives from each unit who exhibit leadership and positive behavior amongst their peers. Youth Voice facilitates conversation between the administrative employees of Echo Glen and the youth who reside in the units. The Youth Voice representatives represent their peers in voicing campus wide concerns and ideas. Asaria represented the peers in her unit for nearly two years, meeting with myself more than three times a month. I always saw Asaria conduct herself with grace and self-awareness which positively influenced the rest of her peers. She spoke for her peers with no personal agenda in the most mature and authentic fashion. Asaria embodied the purpose of Youth Voice and was excellent to work with during his time. While on Youth Voice, Asaria has worked with our administrative team to create a kid friendly visitation room for youth who have younger siblings or children themselves. She advocated for female residents who had children of their own so they could make the best of their situations, as she has done.

A part of my job as a Juvenile Rehabilitation Coordinator, in addition to supervising Youth Voice, is to oversee the Work Experience Program. After earning her High School diploma, Asaria wanted to work as much as possible to save money for her family. She obtained employment with our maintenance crew and visitor's canteen. Maintenance employees constantly gave Asaria praise and informed me of her work ethic and willingness to do whatever was asked of her. After only a few months of working in the visitor's canteen, she helped supervise and train new residents in working the cash register and counting inventory. She is one of the most motivated and hardest working residents I have ever seen at Echo Glen.

I have been impressed with Asaria's positivity and maturity through the years. She never became hopeless or chose to quit. Asaria has utilized every available opportunity to her and has even created some of her own. She is a loving mother, intelligent student, hardworking employee, and strong leader.

Thank you,

A handwritten signature in cursive script that reads "Carmen Rivera".

Carmen Rivera

Juvenile Rehabilitation Coordinator | Echo Glen Children's Center
Adjunct Professor | Seattle University

the murder occurred and 17 years old at the time of plea and sentencing. No direct appeal was taken.

II. DISCUSSION

1. Is the Motion for Relief from Judgment time-barred?

Both motions before the Court require an initial determination whether Defendant's motion is time-barred. CrR 7.8 (b) requires that Asaria Miller's motion be made "within a reasonable time ... and is further subject to RCW 10.73.090, .100, .130, and .140." Likewise, the State's motion under CrR 7.8(c) requires, in part, that the Defendant's motion to be transferred to the Court of Appeals unless the trial court finds the Defendant's motion "is not barred by RCW 10.73.090."

On its face, RCW 10.73.090 bars collateral attacks more than one year after a judgment is final if valid on its face and rendered by a court of competent jurisdiction.² Since no direct appeal was taken, Asaria Miller's judgment was final May 7, 2013 the date it was filed with the court clerk (see RCW 10.73.090(3)(a)). RCW 10.73.090 must be read in conjunction with RCW 10.73.100 which sets out the exceptions to the one year bar. The exception relevant here is RCW 10.73.100(6):

There has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

State v. Houston–Sconiers, 188 Wn.2d 1, 391 P.3d 409 (2017) held that courts sentencing juveniles in adult court have "absolute discretion to depart as far as they want" from standard sentencing ranges and mandatory enhancements. Moreover, *Houston–Sconiers* overruled *State v. Brown*, 139 Wn.2d 20, 983 P.2d 608 (1999) which

² There has been no challenge – and correctly so – to the facial validity of the judgment nor to the jurisdiction of the issuing court.

had held that sentencing courts have no discretion to impose an exceptional sentence below the time specified in mandatory enhancements. *Houston–Sconiers* constitutes a significant change in the law.

Houston–Sconiers is also material to Asaria Miller's sentence. Miller's sentence includes a firearm enhancement. Review of the May 7, 2013 plea and sentencing hearing clearly shows that the sentencing judge, the prosecutor and defense attorney all understood that enhancement time was consecutive and mandatory. *Houston–Sconiers* changed that, at least for juveniles sentenced in adult court.

Finally, *Houston–Sconiers* reinterpreted existing statutes. Rules that give new application to an old rule are presumed to apply retroactively. *Teague v. Lane*, 489 U.S. 288, 290–91, 109 S.Ct. 1060, 103 L.Ed. 2d 334 (1989). A rule is not “new” when it is based on statutory interpretation which is the case in *Houston–Sconiers*. *In re Pers. Restraint of Colbert*, 186 Wn.2d 614, 619–20, 380 P.3d 504 (2016). *Houston–Sconiers* applies retroactively.

Based on the foregoing, Asaria Miller's CrR 7.8 motion is not time barred. Miller's motion under CrR 7.8 must also be made “within a reasonable time”. The motion was filed within a month of the Court of Appeals mandate denying her attempt to enlarge time for direct appeal of her sentence. The motion is also made within a reasonable time.

2. Has Miller made a substantial showing that she is entitled to relief?

The second prong of the State's motion to transfer under CrR 7.8(c)(2) is whether the Defendant has made a substantial showing that she is entitled to relief or resolution of the motion requires a factual hearing.

As a result of a plea agreement, Miller pled to an amended information charging Murder in the First Degree with a firearm enhancement. The amended information dropped two additional Class A felonies which had been charged along with Murder 1 in the original information. There was also a joint recommendation for 300 months plus the 60 month enhancement.

Miller asserts that the sentencing court did not consider her age or youthfulness. Motion for Relief at 4. Miller cites to *Houston–Sconiers* (at 23, internal citations omitted):

...in exercising full discretion in juvenile sentencing, the court must consider mitigating circumstances related to the defendant's youth—including age and its “hallmark features,” such as the juvenile's “immaturity, impetuosity, and failure to appreciate risks and consequences.” It must also consider factors like the nature of the juvenile's surrounding environment and family circumstances, the extent of the juvenile's participation in the crime, and “the way familial and peer pressures may have affected him [or her].” And it must consider how youth impacted any legal defense, along with any factors suggesting that the child might be successfully rehabilitated.

and then argues that these factors were not considered by the court at her sentencing. Motion for Relief at 11. Yet at sentencing, and operating within the ethical restraints of an agreed joint recommendation, defense counsel reminded the court that Miller was 16 and pregnant at the date of the murder, that her father had recruited Miller and had tried to shift the blame to her, that Miller's prior conviction seemed to be a similar situation of her being manipulated by adults, and that even though she went along with the plan part of her really didn't believe it would happen.

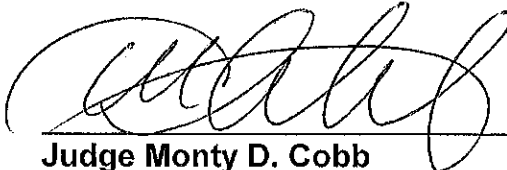
Even more pertinent to this motion, at the sentencing the court discussed Miller's relationship with her father, her level of participation in the crime and referred to parts of her testimony in her father's trial (which the same judicial officer had presided over). The court stated that the information provided was why she didn't go to the top of the range. The record supports a conclusion that the sentencing court actually did consider the factors that would eventually find voice in *Houston–Sconiers*.

Under the unique facts of this case, Miller has not made a substantial showing she is entitled to relief. Further, no additional factual hearing is indicated.

IV. ORDER

State's Motion is granted. Miller's CrR 7.8 Motion for Relief is transferred to the Court of Appeals as a personal restraint petition pursuant to CrR 7.8(c)(2).

So ordered this 19th day of July 2018



Judge Monty D. Cobb

unless the court determines that the motion is not barred by RCW 10.73.090 and either (i) the defendant has made a substantial showing that he or she is entitled to relief or (ii) resolution of the motion will require a factual hearing.

In turn, RCW 10.73.090 mandates that:

No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

Miller brought the instant CrR 7.8 motion on June 7, 2018. *Miller v. Alabama* was decided on June 25, 2012. 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

Almost one year later, this court entered judgment and sentence in the instant case, on May 7, 2013 (Sub. #28). Miller filed the instant CrR 7.8 motion more than one year after the judgment and sentence became final. The judgment and sentence is valid on its face. Therefore, under CrR 7.8 this court must transfer this case to the Court of Appeals as a personal restraint petition unless one of the time-bar exceptions enumerated by CrR 7.8(c)(2) applies.

The instant case is similar to *State v. Scott*, ___ Wn.2d ___, 416 P.3d 1182 (No. 94010-7, May 10, 2018), where the defendant filed a CrR 7.8 motion seeking to be resentenced based on a change in law based on juvenile brain science. The *Scott* court noted that the defendant's CrR 7.8 motion was time barred unless the defendant could show that an exception to the time bar existed under RCW 10.73.100(6). The *Scott* Court held that "the collateral relief that Scott seeks (i.e., resentencing) is unavailable because

he has an adequate remedy, which is to seek parole under RCW 9.94A.730.” *Scott* at para. 11.

Miller asserts that this issue is controlled by *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017). However, *Houston-Sconiers* was a direct appeal rather than review of a collateral attack. *Id.* No applicable precedent has held that a defendant in Miller’s circumstances can escape the time bar imposed by RCW 10.73.090. Our Supreme Court has repeatedly distinguished its holdings and reasoning in direct appeals related to juvenile brain science from collateral review. *See, Scott* at para. 17 and n.7. Thus, in *Scott*, our Supreme Court concluded that “under *Miller*, *Montgomery*, *Houston-Sconiers*, and *State v. Ramos*, 187 Wn.2d 420, 387 P.3d 650, *cert. denied*, 138 S. Ct. 467 (2017), remand for resentencing is not required by the Eight Amendment in [*Scott*].” *Scott* at para. 19.

II. Statement of Case

On November 30, 2012, the State charged Asaria Miller with one count of conspiracy to commit murder in the first degree, one count of burglary in the first degree (with firearm enhancement), and one count of murder in the first degree (with firearm enhancement). Sub. #1. Miller entered a plea agreement with the State. RP 1-3 (Attached). Pursuant to the plea agreement, the State filed an amended information, charging only murder in the first degree with a firearm enhancement, and eliminated

several points and one five-year enhancement from the range of sentence that Miller faced. Sub. #25.

In the plea agreement, the parties agreed to a recommended sentence of 360 months, which included the 60-month firearm enhancement. RP 3, 6, 9. Miller pled guilty. Sub. #26; RP 3-8. At sentencing, the State abided by the agreement. RP 9-16. Through counsel, Miller also abided by the agreement. RP 16-20. However, to address the risk that the trial court might go beyond the agreed sentencing recommendation, Miller's counsel pointed out Miller's youthfulness to the court and argued that Miller's crime might have been "the whim of a – of a 16 year old...." RP 18. Miller's counsel concluded that "the Court should consider in Asaria's case, given her age, her pregnancy, the circumstances, should accept the plea bargain that was the result of a lot of work between [the prosecutor] and [defense counsel] and Ms. Miller trying to bring this about." RP 20.

When sentencing Miller, the trial court stated that "in taking into consideration all of the factors the parties have said, and the consideration that Ms. Miller, at the age of 16, committed a violent offense, having already committed a violent offense, has now set her life." RP 21. The court then exceeded the agreed sentence by 30 months, imposing a sentence of 390 months rather than 360. RP 21; Sub. #28. The court explained that it did not sentence Miller to the top of the range, based on the arguments presented, but that the court felt that a sentence beyond the midpoint of the range was appropriate "based on the culpability of [Miller's] conduct." RP 22.

III. Grounds for Relief

CrR 7.8(c)(2) requires this court to transfer Miller's CrR 7.8 motion to the court of appeals as a personal restraint petition.

IV. Argument

A) *Houston-Sconiers* did not create a substantive change in the law that is applicable to Miller's collateral attack on her sentence.

In *State v. Houston-Sconiers*, the Washington Supreme Court distinguished between cases on direct review and those on collateral review, as follows:

Critically, the Eighth Amendment requires trial courts to exercise this discretion at the time of sentencing itself, regardless of what opportunities for discretionary release may occur down the line. *See, e.g., Miller*, 132 S.Ct. at 2468-72 (listing reasons why certain mitigating factors had to be considered at the time of child's initial sentencing); *Graham*, 560 U.S. at 69-70, 130 S.Ct. 2011 (Eighth Amendment bars imposition of life without parole sentence on juvenile nonhomicide offender, despite the fact that Graham might be eligible for executive clemency). Indeed, the only time the Supreme Court has spoken approvingly of a postsentencing *Miller* "fix" such as extending parole eligibility to juveniles is when addressing how to remedy a conviction and sentence that were long final. *Montgomery v. Louisiana*, —U.S. —, 136 S.Ct. 718, 736, 193 L.Ed.2d 599 (2016). Roberts's and Houston-Sconiers's convictions are on appeal; they are not even final.

State v. Houston-Sconiers, 188 Wn.2d 1, 20, 391 P.3d 409, 419 (2017). The Court explained that:

The fact that a recently enacted statute may offer the possibility of another remedy in the future, or on collateral review, does not resolve whether petitioners' sentences are unconstitutional and in need of correction now, and it does not provide for the consideration of mitigating factors to which they are entitled now, ***while their convictions are still not yet final.***

Id. at 22-23 (emphasis added). The Court then clarified the distinction between cases on direct appeal and those on collateral review, follows: "Statutes like RCW 9.94A.730 may provide a remedy on collateral review, *Montgomery*, 136 S.Ct. at 736, but they do not provide sentencing courts with the necessary discretion to comply with constitutional requirements in the first instance." *Houston-Sconiers* at 23.

Miller's conviction was final for slightly more than five years before she brought the instant motion on collateral review. Thus, the standard of review for collateral attacks, rather than the standard for direct appeals, applies to this case.

B) Miller has not shown that her youthfulness is material to her sentence.

Miller's motion assumes a right to be resentenced based only on the fact of her age, and she offers no evidence whatsoever to show that the trial court did not consider her youthfulness, nor does she otherwise provide evidence to meet her burden of proof for a CrR 7.8 motion to show that her culpability was actually diminished by her youthfulness on the facts of this case. In *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015), our Supreme Court emphasized that:

Today, we do have the benefit of those advances in the scientific literature. Thus, we now know that age may well mitigate a defendant's culpability, even if that defendant is over the age of 18. **It remains true that age is not a per se mitigating factor automatically entitling every youthful defendant to an exceptional sentence. In this respect, we adhere to our holding in *Ha'mim*, 132 Wash.2d at 847, 940 P.2d 633.** But, in light of what we know today about adolescents' cognitive and emotional development, we conclude that youth may, in fact, "relate to [a defendant's] crime," *id.* at 847, 940 P.2d 633 (quoting RCW 9.94A.340); that it is far more likely to diminish a defendant's culpability than this court implied in *Ha'mim*; and that youth can, therefore,

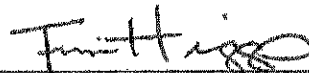
amount to a substantial and compelling factor, in particular cases, justifying a sentence below the standard range.

O'Dell at 695–96 (emphasis added). Miller has not made any showing that hers is one of these “particular cases[.]” Instead, other than passionate prose to idealize her own past, she relies exclusively on the newly found scientific literature that would assist in “particular cases” as if age is in and of itself sufficient to automatically entitle her to relief under CrR 7.8. Thus, Miller fails to satisfy the materiality test that is applicable to CrR 7.8 collateral attacks.

V. Conclusion

This court should transfer Miller’s CrR 7.8 motion to the court of appeals for consideration as a personal restraint petition, because sentencing occurred more than one year before Miller brought her motion, the judgment and sentence is valid on its face, and no applicable exception to the RCW 10.73.090 time bar applies in the instant case.

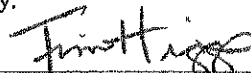
DATED July 2, 2018, by:



Tim Higgs (WSBA #25919)
Deputy Prosecutor, Mason County

I declare under penalty of perjury under the laws of the State of Washington that on this date I delivered a copy of this pleading to Kimberly Ambrose by email to the following address: kambrose@uw.edu. (The parties have agreed to accept pleadings by email).

Dated this 2nd day of July, 2018, in Shelton, Washington, by:



Tim Higgs (WSBA #25919)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF MASON

STATE OF WASHINGTON,)	
)	
Plaintiff,)	Court of Appeals
)	No. 50402-2-II
v.)	
)	Mason County Cause
ASARIA J. MILLER,)	No. 12-1-00501-0
)	
Defendant.)	

VERBATIM REPORT OF PROCEEDINGS

5/7/2013 - Change of Plea and Sentencing Hearing

JUDGE AMBER L. FINLAY
MASON COUNTY SUPERIOR COURT

Counsel:
Michael K. Dorcy, Prosecuting Attorney
Clifford F. Cordes, Attorney for Defendant

Carolyn Putvin, Authorized Transcriptionist
MASON COUNTY SUPERIOR COURT
P.O. Box X
Shelton, WA 98584
(360) 427-9670 Ext. 289

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MASON COUNTY SUPERIOR COURT

August 07, 2018 - 10:39 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52119-9
Appellate Court Case Title: Personal Restraint Petition of Asaria Justice Miller
Superior Court Case Number: 12-1-00501-0

The following documents have been uploaded:

- 521199_Other_20180807103834D2893461_2423.pdf
This File Contains:
Other - CrR 7.8 Petition
The Original File Name was MX-M623N_20180807_104044.pdf

A copy of the uploaded files will be sent to:

- timw@co.mason.wa.us

Comments:

Sender Name: Amy S Zalapa - Email: azalapa@co.mason.wa.us

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MASON COUNTY SUPERIOR COURT

August 02, 2018 - 12:50 PM

Filing PRP Transfer Order

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: Case Initiation
Trial Court Case Title: State of Washington Vs Miller, Asaria Justice
Trial Court Case Number: 12-1-00501-0
Trial Court County: Mason County Superior Court
Signing Judge:
Judgment Date:

The following documents have been uploaded:

- PTO_Other_20180802124836D2897603_9382.pdf
This File Contains:
Other - Motion to transfer
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- PTO_PRP_Transfer_Order_20180802124836D2897603_6905.pdf
This File Contains:
PRP Transfer Order
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Comments:

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